

Complaint

34 F. T. C.

IN THE MATTER OF

H. M. WILLIAMS, TRADING AS WILLIAMS CANDY
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4252. Complaint Aug. 21, 1940—Decision, Mar. 3, 1942*

Where an individual, engaged in manufacture and competitive sale and distribution of candy so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to consumers, a typical assortment consisting of 40 uniform bars, together with a push card for use in their sale under a plan in accordance with which purchaser's payment ranged from 1 cent to 5 cents as determined by number secured by chance;

Sold such assortments to distributors, to members of the purchasing public for resale, and to retailers, by whom they were exposed and sold in accordance with aforesaid sales plan involving a game of chance to procure candy bars at much less than their normal retail price; and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products, contrary to an established policy of the United States Government, and in violation of criminal laws, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy and sell his candy in preference to products of aforesaid competitors, from whom substantial trade was thereby diverted to him;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. W. W. Sheppard*, *Mr. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. H. L. Taylor and *Mr. Thaddeus A. Adams*, of Charlotte, N. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. M. Williams, individually and trading as Williams Candy Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect

thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. M. Williams, is an individual trading as Williams Candy Co., with his principal office and place of business located at 2819 Monroe Road, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be transported from his place of business in the city of Charlotte, N. C., to purchasers thereof at their respective points of location in the various States of the United States other than the State of North Carolina. There is now and has been for more than 1 year last past a course of trade by respondent in said candy in commerce between and among various States of the United States. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4 and 5, pay 1¢, 2¢, 3¢, 4¢ and 5¢, respectively. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished various push cards for use in the sale and distribution of his candy by means of a game of chance, gift, enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy, expose and sell the same to the purchasing public

in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among various States of the United States to respondent from his said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 21, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, H. M. Williams, individually and trading as Williams Candy Co.,

charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. M. Williams, is an individual trading as Williams Candy Co., with his office and place of business located at 2819 Monroe Road, Charlotte, N. C. For some 5 years last past respondent has been engaged in the manufacture and in the sale and distribution of candy to distributors and retail dealers, and to members of the purchasing public who in turn resell such candy to other members of the public.

Respondent causes, and has caused, his products, when sold, to be transported from his place of business in the State of North Carolina to the purchasers thereof located in various other States of the United States. Respondent has for some 5 years last past maintained a course of trade in his products in commerce among and between the various States of the United States.

PAR. 2. At all times mentioned herein respondent has been in active competition with other individuals, and with corporations and partnerships, engaged in the sale and distribution of candy in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business as described above, respondent has sold to distributors and retail dealers, and to members of the purchasing public, for resale, certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when such candy was sold and dis-

Findings

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tributed to the consumers thereof. One of these assortments, which was typical of the plan or method used by respondent, was as follows:

This assortment was composed of a number of bars of candy of uniform size and shape, together with a device commonly called a push-card. The push-card had 4 partially perforated disks, on the face of each of which was printed the word "Push". Concealed within the disks were numbers ranging from "1" to "5", inclusive. When the disks were pushed or separated from the card a number was disclosed. Purchasers pushing the disks paid for a bar of candy the number of cents corresponding to the figure concealed within the disk pushed. For example, a purchaser who pushed a disk disclosing the figure 2 paid 2 cents for a bar of candy, while a purchaser pushing a disk disclosing the number 5 paid 5 cents for a bar of candy. The numbers within the disks were effectively concealed from purchasers and prospective purchasers until the disk had been pushed or separated from the card. The prices paid for the bars of candy were thus determined wholly by lot or chance.

PAR. 4. Retail dealers and other purchasers of respondent's candy exposed and sold such candy to the purchasing public in accordance with the sales plan described above. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with such sales plan. The use by the respondent of such sales plan or method in the sale of his candy and the sale of such candy through the use and with the aid of such sales plan, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 5. The sale of candy to the purchasing public by the plan or method herein described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. Many of respondent's competitors are and have been unwilling to adopt and use this method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons were attracted by the sales plan or method employed by respondent in the sale and distribution of his candy, and by the element of chance involved therein, and were thereby induced to buy and sell respondent's candy in preference to the products of respondent's competitors who do not use such methods. The use by respondent of the sales plan or method herein described had the tendency and capacity to, and did, divert substantial trade to the respondent from his competitors who do not use such methods.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission' Act.

It is ordered, That the respondent, H. M. Williams, individually and trading as Williams Candy Co., or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others assortments of candy or other merchandise, together with push- or pull-cards, punchboards or other lottery devices, which said push- or pull-cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

2. Supplying to or placing in the hands of others push- or pull-cards, punchboards or other lottery devices, either with candy or other merchandise or separately, with said push- or pull-cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing respondent's merchandise or any other merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

LOGAN-CACHE KNITTING MILLS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4075. Complaint, Mar. 30, 1940—Decision, Mar. 9, 1942

Where a corporation chartered in 1926 and engaged in the manufacture and interstate sale and distribution, through house-to-house solicitors, and through its retail stores, of women's knitted suits, dresses and sweaters, made to the individual's measurements, and in thus selling such products through its subsidiary organized in 1934 as Logan Sportswear Co., under registered trade name "Loganknit," to which it had given wide publicity and had featured in periodical and radio advertising campaigns at large expense, so that said trade name "Loganknit" had become widely known, particularly in the western States, and its knitted garments become known to the public as "Loganknits"; and

Thereafter a competitive corporation, organized in 1937, and engaged as Logan-Cache Knitting Mills, in soliciting orders through house-to-house canvassers for women's knitted garments made to the individual's measure—

- (a) Passed off as "Loganknits" its said products, and represented that it was the manufacturer of "Loganknits," through direct representations of its salesmen and through artifice and use of half-truths and other misleading and deceptive statements and expressions;

With result that in numerous instances members of the public purchased its said products in the mistaken belief that they were purchasing the genuine products thus named; and

- (b) Used such expressions in advertising and on its letterheads and otherwise as "Established in 1890," "The Old Reliable Since 1890," and "Pioneer Knitters of the West";

The facts being that its founder in 1935 purchased the assets of the Cache Knitting Works—which, while organized in 1890, with place of business in Logan, Utah, had discontinued operations in 1932—and operated such business under said name until its dissolution in 1937, when it organized the corporation here in question, which facts did not support its contention that it was the successor of said Cache Knitting Works and thus entitled to represent itself as having been established in 1890 or being the pioneer knitters of the West; individual acquiring aforesaid assets was in no way connected with said older concern which, as aforesaid, had not been engaged in active business for three or four years, so that in no event could corporation here involved be considered as having started business earlier than 1935; a number of knitting mills were established and in active operation in Logan prior to that time; and it was not, as claimed, an old, established concern such as preferred by a substantial portion of the purchasing public as, in its belief, offering purchasers certain definite advantages;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity of its products and its